

## Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 AF-10 ARA-10 EA-10 EUR-12  
NEA-11 OIC-02 ACDA-12 AGRE-00 AID-05 CEA-01  
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OES-07 OMB-01 PA-01 PM-05 SP-02 SS-15 ICA-11  
/191 W

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R 041413Z MAY 78  
FM USMISSION GENEVA  
TO SECSTATE WASHDC 9201

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06773

E.O. 11652: GDS  
TAGS: PLOS  
SUBJECT: LOS CONFERENCE - MAY 1 HIGHLIGHTS

BEGIN SUMMARY: LDC'S CONTINUED TO OPPOSE A STRONG ROLE  
FOR INDUSTRIALIZED STATES IN THE COUNCIL IN NG-3.  
COMMITTEE II DISCUSSED "OTHER ISSUES." NG-5 EXAMINED  
THE QUESTION OF COMPULSORY CONCILIATION FOR FISHERIES.  
COMMITTEE III GROUPS RECEIVED PROPOSALS ON ARTICLE 212,  
221 AND 229. END SUMMARY.

1. NG-3 (ORGANS OF THE AUTHORITY) DISCUSSED THE COMPO-  
SITION OF THE COUNCIL AND VOTING PROCEDURES. DEVELOPING  
COUNTRIES CONTINUED TO OBJECT TO A "VETO" FOR SPECIAL  
INTEREST GROUPS IN THE COUNCIL AND OPPOSED DEVELOPED  
COUNTRIES' PROPOSALS TO INCREASE THE NUMBERS AND  
INFLUENCE OF THOSE GROUPS. THE SWEDISH IDEA TO INCREASE  
GEOGRAPHIC REPRESENTATION FROM ONE TO TWO FROM EACH  
REGION IN ARTICLE 159 PARA 1 (E) STILL IS UNDER CONSI-  
DERATION BUT NO SATISFACTORY FORMULA HAS YET BEEN  
FOUND.

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2. THE KOH GROUP SESSION ON FINANCIAL ARRANGEMENTS  
BETWEEN CONTRACTORS AND THE AUTHORITY WAS CURTAILED  
BECAUSE OF A CONFLICTING G-77 MEETING. MOST OF THE  
INTERVENTIONS REPEATED ESTABLISHED POSITIONS. IT IS  
OF NOTE THAT FOR THE SECOND TIME ARGENTINA MADE A VERY  
CONSTRUCTIVE INTERVENTION TO THE EFFECT THAT THE BURDEN

ON CONTRACTORS SHOULD BE A REASONABLE ONE AND THAT A ROYALTY FIGURE SHOULD BE ON A SLIDING SCALE IN THE RANGE OF 4 TO 8 PERCENT.

3. COMMITTEE II RESUMED DEBATE OF "OTHER ISSUES." THE FRG PROPOSAL ON ARTICLE 2(1) WAS SECONDED BY POLAND, BELGIUM, BULGARIA, GREECE, DENMARK AND THE U.S. (CLINGAN); BUT OPPOSED BY TANZANIA AND PAKISTAN. CANADA FORMALLY SUBMITTED AN ITEM ON ARTICLE 19(2)(H), WITH BACKING BY SOMALIA AND THE U.S. THE USSR, ISRAEL, GHANA BULGARIA, CUBA, GREECE, TURKEY, ROMANIA, POLAND, URUGUAY, GDR, AUSTRALIA, FRG, BYELORUSSIA, ARGENTINA, IRAQ AND JAMAICA VOICED THEIR DISAGREEMENT.

4. IN ADDITION ON:

A) ARTICLE 23, THE FRG WANTS TO ADD "GENERALLY ACCEPTED" BEFORE "INTERNATIONAL AGREEMENTS" TO BRING THE WORDING INTO CONFORMITY WITH OTHER PROVISIONS AND CLARIFY THAT DOCUMENTARY REQUIREMENTS FOR NUCLEAR-POWERED OR TRANSPORTING VESSELS MUST ACCORD WITH INTERNATIONAL RULES AND STANDARDS. ROMANIA, USSR, POLAND, BULGARIA, AND JAPAN AGREED WITH THIS. PAKISTAN MADE THE COUNTER-PROPOSAL: "IN ACCORDANCE WITH THEIR LAWS AND RIGHTS, COASTAL STATES MAY REQUIRE PRIOR NOTIFICATION FOR NUCLEAR-POWERED SHIPS AND SHIPS CARRYING NUCLEAR MATERIALS." CONFIDENTIAL

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ARGENTINA, PERU, TURKEY, PRC, SOMALIA, GHANA, SPAIN, HONDURAS, COLOMBIA, URUGUAY, ECUADOR, INDIA, BANGLADESH, INDONESIA, IRAN, NORTH KOREA, HAITI, MOROCCO AND LIBYA SPOKE IN FAVOR OF PAKISTAN'S VIEW.

B) ARTICLE 25(3), IN ADDITION TO THE RIGHT OF THE COASTAL STATE TO SUSPEND PASSAGE IN THE TERRITORIAL SEA UNDER CONDITIONS WHERE THERE IS A THREAT TO ITS SECURITY, BELGIUM WANTS TO ADD IN "OR FOR THE SAFETY OF SHIPPING." SUPPORT CAME FROM BULGARIA, IRAN, PERU, FRANCE, YUGOSLAVIA, INDONESIA, UAE, ROMANIA, PORTUGAL, ARGENTINA, MADAGASCAR, GHANA, SOMALIA, SPAIN, URUGUAY, GREECE, CHILE, INDIA, PAKISTAN, UKRAINE, POLAND, HONDURAS, BULGARIA, BRAZIL, EGYPT, MOROCCO, TURKEY, ITALY, ECUADOR, IRELAND, BANGLADESH, EL SALVADOR AND CUBA.

C) ARTICLE 30, NORTH KOREA WANTS TO: ADD "OR OTHER GOVERNMENT SHIPS OPERATING FOR NON-COMMERCIAL PURPOSES" AFTER "WARSHIPS" TO SHOW AN IDENTITY IN RESPECT TO COASTAL STATE RIGHTS OVER NON-INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA; AND ADD A NEW PARA: "IF ANY WARSHIP DOES NOT COMPLY WITH THE LAWS AND REGULATIONS OF

COASTAL STATES CONCERNING PASSAGE THROUGH THE TERRITORIAL SEA, AND DISREGARDS ANY REQUESTS FOR COMPLIANCE WITH PRIOR AUTHORIZATION AND NOTIFICATION OF THE COASTAL STATE, THE COASTAL STATE MAY TAKE NECESSARY SELF-DEFENSE MEASURES AGAINST IT." MADAGASCAR, UAE, PERU, ARGENTINA, PAKISTAN, URUGUAY AND EGYPT AGREED WITH THE KOREANS.

D) ARTICLE 33, PERU WANTS A NEW PARA TO SAY:  
"FOREIGN SHIPS AND MILITARY AIRCRAFT PASSING THROUGH THE CONTIGUOUS ZONE SHALL REFRAIN FROM ENGAGING IN ACTIVITIES NOT DIRECTLY RELATED TO NAVIGATION." MANY SAID THE CONTINGUOUS ZONE CONCEPT WAS OBSOLETE, GIVEN THAT OF THE EEZ. BUT THEY WOULD SUPPORT PERU IF THE CONTIGUOUS ZONE WERE RETAINED. HONDURAS DISTINGUISHED THE  
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INR-10 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01  
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CONTIGUOUS ZONE FROM THE EEZ AND CONTINENTAL SHELF BY THE FOLLOWING AT THE BEGINNING OF ART. 33: "WITHOUT PREJUDICE TO THE RIGHTS AND JURISDICTION OF COASTAL STATES IN RESPECT OF THE EEZ AND CONTINENTAL SHELF, INCLUDING ITS SAFETY ZONE..." PROPOSALS WERE SUPPORTED BY MADAGASCAR (PERU'S ADDITION ONLY), EGYPT, ECUADOR,

HAITI, (HONDURAS' ADDITION), PAKISTAN, BRAZIL, GUINEA-BISSAU, EL SALVADOR, SOMALIA, GUATEMALA AND COLOMBIA. PAKISTAN SUGGESTED THAT "THE COASTAL STATES MAY EXERCISE CONTROL NECESSARY TO MAINTAIN ITS SECURITY" BE ADDED TO ARTICLE 33. AUSTRIA, POLAND, ETHIOPIA, UAE, GDR, TURKEY, YUGOSLAVIA, BULGARIA AND BAHRAIN OBJECTED TO THESE SUGGESTIONS.

5. SPAIN, MOROCCO, AND GREECE INTRODUCED AMENDMENTS TO THE STRAITS ARTICLES. GREECE PRESENTED WRITTEN AMENDMENTS TO ARTS. 39(1)(B), 39(3)(A), 41(8) BIS, 42(1)(A) WHICH WOULD INCORPORATE RULES AND REGULATIONS GOVERNING AIRCRAFT AND FLIGHT OVER INTERNATIONAL STRAITS. BOTH SPAIN AND MOROCCO CLAIMED AN IMBALANCE IN THE STRAITS ARTICLES AND SAID THEY HAD AMENDMENTS WHICH WILL BE CONFIDENTIAL

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PRESENTED IN DETAIL SHOULD COMMITTEE II HOLD ANOTHER INFORMAL MEETING.

6. NG-4 CHAIRMAN NANDAN GAVE HIS COMPROMISE TEXT WITH CHANGES IN ARTICLES 62(2) AND 70 (FULL TEXT SENT SEPTEL) TO GROUP. NANDAN TRIED TO ACCOMMODATE THE INTERESTS OF THE LL/GDS AND THE COASTAL STATES IN RESPECT TO THE FIVE MOST DIVISIVE ISSUES BETWEEN THEM BY CAREFUL TERMINOLOGY:

(1) AVOIDANCE OF THE USE OF "PREFERENTIAL" OR "PRIORITY" ACCESS BY LL/GDS; (1) ACCESS TO THE "SURPLUS" OF THE ALLOWABLE CATCH; (REFERENCE TO THE "RIGHT" OF LL STATES TO PARTICIPATE IN THE LIVING RESOURCES OF THE ZONE, UNDER SPECIFIED CONDITIONS; (4) SCRUPULOUS ADHERENCE TO "STATES WITH SPECIAL CHARACTERISTICS".

IT WAS PRECISELY TRIED TO ACCOMMODATE THE INTERESTS OF THE LL/GDS AND THE COASTAL STATES IN RESPECT TO THE FIVE MOST DIVISIVE ISSUES BETWEEN THEM BY CAREFUL TERMINOLOGY:

(1) AVOIDANCE OF THE USE OF "PREFERENTIAL" OR "PRIORITY" ACCESS BY LL/GDS; (1) ACCESS TO THE "SURPLUS" OF THE ALLOWABLE CATCH; (REFERENCE TO THE "RIGHT" OF LL STATES TO PARTICIPATE IN THE LIVING RESOURCES OF THE ZONE, UNDER SPECIFIED CONDITIONS; (4) SCRUPULOUS ADHERENCE TO "STATES WITH SPECIAL CHARACTERISTICS".

IT WAS PRECISELY THESE SEMANTIC NUANCES WHICH ATTRACTED OBJECTIONS. AUSTRIA CALLED "STATES WITH SPECIAL CHARACTERISTICS" A MOST "UNHAPPY TERM." PERU'S MAIN DIFFICULTY WAS WITH THE USE OF THE WORD "RIGHT." PAKISTAN OBJECTED TO THE IMPERATIVE TONE OF THE LANGUAGE IN ART. 69(3) AND 70(4). BOTH SIDES, HOWEVER, EXPRESSED THE HOPE THAT AFTER CAREFUL CONSIDERATION BY THEIR RESPECTIVE GROUPS, A REASONABLE RAPPROCHEMENT WOULD EMERGE. THE USSR, IN A TURN OF THE SCREW TO ITS EASTERN EUROPEAN GDS COLLEAGUES, NOTED THE "VERY IMPORTANT, BASIC

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PRINCIPLE" ELABORATED IN ART. 62, PARA 2 (COASTAL STATE DETERMINATION OF ITS TOTAL ALLOWABLE CATCH, AND THE INCONSISTENCY THIS REPRESENTED IN RESPECT OF ART. 62, PARA 3 (UTILIZATION). NG-4 WILL MEET MAY 2 FOR A THOROUGH DISCUSSION OF THE COMPROMISE TEXT.

7. THE NG-5 WORKING GROUP OF 15 MOVED TOWARD AN ACCEPTABLE COMPROMISE ON THE SETTLEMENT OF DISPUTES CONCERNING FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE (ARTICLE 296(4). ALTHOUGH THE COASTAL STATES MAINTAINED THAT COMPULSORY ADJUDICATION SHOULD NOT APPLY TO ANY OF THEIR RIGHTS OVER LIVING RESOURCES OF THE ZONE, SOME SHOWED A WILLINGNESS TO EXPAND COMPULSORY CONCILIATION TO COVER A NUMBER OF THESE RIGHTS. PREVIOUSLY, COASTAL STATES HAD ARGUED THAT ONLY CASES OF GROSS AND MANIFEST OVER-EXPLOITATION SHOULD BE SUBJECT EVEN TO THIS NON-BINDING FORM OF THIRD-PARTY PROCEDURE. HOWEVER, SEVERAL COASTAL STATES (INCLUDING CHILE AND MADAGASCAR) INDICATED THEY WOULD CONSIDER CONCILIATION FOR ABUSES OF DISCRETION RELATING TO CONSERVATION GENERALLY (ARTICLE 61). IN ADDITION, THERE WAS CONSIDERABLE SUPPORT FOR A US SUGGESTION THAT DISPUTES OVER FISHERIES AGREEMENTS BETWEEN THE COASTAL STATE AND OTHERS BE SUBJECT TO COMPULSORY CONCILIATION. THIS SUGGESTION WAS MADE IN THE CONTEXT OF THE OBSERVATION THAT THE ARTICLES GRANTING RIGHTS TO OTHER STATES (62, 69 AND 70) REQUIRED THAT THEY BE IMPLEMENTED BY AGREEMENTS WITH THE COASTAL STATE.

8. IN RETURN FOR EXPANDING COMPULSORY CONCILIATION, MOST OF THE LL/GDS SEEMED WILLING TO DROP OR SUSPEND THEIR PREVIOUS INSISTENCE ON COMPULSORY AND BINDING ADJUDICATION OF DISPUTES RELATING TO THEIR RIGHTS OF ACCESS TO THE ZONE. HOWEVER, DISTANT-WATER FISHING STATES, INCLUDING THE SOVIET UNION, BULGARIA (WHICH, TOGETHER WITH AUSTRALIA, HAS JOINED THE NEGOTIATING GROUP) AND JAPAN, CONTINUED

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TO INSIST UPON ADJUDICATION OF DISPUTES CONCERNING THEIR ACCESS TO SURPLUS ALLOWABLE CATCH. THE SOVIET DELEGATE WAS PARTICULARLY INSISTENT, ASSERTING THAT CONSERVATION QUESTIONS UNDER ARTICLE 61 WERE UNIMPORTANT, AND WERE IN ANY CASE UNDER EXCLUSIVE JURISDICTION OF THE COASTAL STATE. PARAGRAPHS (2) AND (3) OF ARTICLE 62 WERE THE

CENTER OF HIS CONCERN, AS THEY DEAL WITH DETERMINATION  
AND ALLOCATION OF SURPLUS. DISPUTES OVER THESE PARAGRAPHS,  
ESPECIALLY CASES OF NON- OR PARTIAL ALLOCATION, SHOULD

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BE SUBJECT TO COMPULSORY AND BINDING ARBITRATION.  
CONCILIATION WAS, HE SAID, INSUFFICIENT PROTECTION ON  
THESE POINTS.

9. IT WAS AGREED THAT A DRAFT COMPROMISE WOULD BE  
PREPARED BASED ON THE DAY'S DISCUSSION.

10. COMMITTEE III (CHAIRER BY VALLARTA) DISCUSSED  
ARTICLE 212(6) WHERE THE USSR PROPOSED: "THE INTER-  
NATIONAL RULES AND STANDARDS REFERRED TO IN THIS ARTICLE  
INCLUDE THOSE RELATED TO PROMPT NOTIFICATION TO COASTAL  
STATES WHOSE COAST LINES OR RELATED INTERESTS MAY BE  
AFFECTED BY INCIDENTS INCLUDING MARITIME CASUALTIES WHICH  
INVOLVE DISCHARGES OR PROBABILITY OF DISCHARGES."

11. A LATER LUNCHEON GROUP MEETING AGREED TO THE  
PROPOSAL WITH "INTER ALIA" AFTER THE WORD "INCLUDE."  
THIS SAME SMALL GROUP ALSO AGREED THAT CHAIRMAN YANKOV  
WOULD MAKE A FORMAL STATEMENT THAT THE SPECIFIC REFERENCE  
TO NOTIFICATION WAS NOT INTENDED TO LIMIT THE MEANING  
OF THE TERM INTERNATIONAL RULES AND STANDARDS.  
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12. IN COMMITTEE III, ELEVEN STATES SPONSORED A MOVE TO ALLOW STATES TO SET UNILATERAL STANDARDS FOR DESIGN, EQUIPMENT, CONSTRUCTION AND MANNING STANDARDS (DECM) OF FOREIGN FLAG VESSELS IN THE TERRITORIAL SEA IF NO INTERNATIONAL STANDARDS EXIST (ART. 212). COASTAL STATE STANDARDS FOR DECM WOULD HAVE TO CONFORM TO GENERALLY ACCEPTED INTERNATIONAL STANDARDS IF SUCH STANDARDS DO EXIST. THERE WAS STRONG OPPOSITION FROM SEVERAL MARITIME AND EUROPEAN STATES AND LITTLE SUPPORT EXCEPT FROM THE SPONSORS: BAHAMAS, BARBADOS, CANADA, ICELAND, KENYA, NEW ZEALAND, PHILIPPINES, PORTUGAL, SOMALIA, SPAIN, TRINIDAD AND TOBAGO.

13. A CANADIAN PROPOSAL ON ARTICLE 221(5) - TO ALLOW INSPECTION OF A VESSEL IF THERE IS A SUBSTANTIAL DISCHARGE INTO OR SIGNIFICANT POLLUTION OR THREAT OF POLLUTION OF THE MARINE ENVIRONMENT - WAS ALSO REVIEWED. THE EXISTING TEXT REQUIRES A SUBSTANTIAL DISCHARGE AND SIGNIFICANT POLLUTION AND DOES NOT PROVIDE FOR INSPECTION WHEN THERE IS MERELY A THREAT OF POLLUTION. PORTUGAL, ICELAND, TRINIDAD AND TOBAGO, GHANA, SPAIN, EGYPT, AGREED WITH CANADA, BUT THE UK, GREECE, BRAZIL, CUBA AND BULGARIA OPPOSED.

14. THE US AMENDMENTS TO ART. 221(6), GARNERED SOME SUPPORT, BUT ALSO SOME OPPOSITION TO REPLACING "FLAGRANT OR GROSS" VIOLATION WITH "WHERE THERE IS CLEAR OBJECTIVE EVIDENCE." OTHER ASPECTS OF THE US PROPOSAL TO SUBSTITUTE MORE OBJECTIVE CRITERIA FOR ARRESTS IN THE EEZ RECEIVED LESS SUPPORT. IT IS QUESTIONABLE WHETHER ANY OF THE PROPOSED AMENDMENTS RECEIVED ENOUGH SUPPORT FOR INCLUSION IN A REVISED TEXT.

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15. THE US PROPOSAL TO PRECLUDE FLAG STATE PREEMPTION IN THE EEZ (ART. 229) WAS ONLY SECONDED BY CANADA AND SPAIN BUT OPPOSED BY SEVERAL DEVELOPED AND DEVELOPING STATES. RICHARDSON

NOTE BY OC/T: TELEGRAM DELAYED IN TRANSMISSION.

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